



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF FALUDY-KOVÁCS v. HUNGARY

(Application no. 20487/13)

JUDGMENT

STRASBOURG

23 January 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Faludy-Kovács v. Hungary,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President*,

Paulo Pinto de Albuquerque,

Egidijus Kūris,

Iulia Motoc,

Georges Ravarani,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 19 December 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 20487/13) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Ms Katalin Fatime Faludy-Kovács (“the applicant”), on 16 March 2013.

2. The applicant was represented by Mr B. Karkosák, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent at the Ministry of Justice.

3. The applicant alleged, in particular, that her rights had been breached by the publication of defamatory statements in a weekly newspaper and by the failure of the Hungarian courts to protect her reputation.

4. On 4 March 2015 the complaint concerning the alleged breach of Article 8 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Budapest.

6. She is the widow of a well-known Hungarian poet, György Faludy. They married in 2002, and their relationship, partly due to a significant

difference in age, as well as their life and work, were constantly the subject of widespread media coverage. They often appeared in the tabloids.

7. The applicant's husband died in 2006.

8. On an unspecified date in 2008 an article was published in a daily newspaper, *Blikk*, based on an interview with the applicant, revealing that she wanted to have a child who would be a blood relative of both her and her late husband and have the same intellect and attitude as him. The applicant explained that she envisaged her own sister and her late husband's grandson being the parents of that child.

9. Following some talks with the applicant, on 26 March 2008 *Helyi Téma*, at the material time the biggest weekly journal, republished the same story, adding that the late poet's grandson had dismissed the idea of having a child with the applicant's sister. The front page of the newspaper contained a photograph of the applicant with her late husband and the headline "Trampling on the memory of Faludy. The widow does everything for the limelight". Despite a previous request by the applicant, the article made no mention of a book to be published on the applicant's late husband.

10. Subsequently, in reaction to a complaint by the applicant, the newspaper published an additional article on the book under publication; however, it did not appear on the front page as the applicant's had presumably wished. The applicant asked for a further article to be published but the newspaper declined.

11. Dissatisfied, the applicant lodged a civil action against the publisher of the weekly newspaper under article 78 of the (old) Civil Code, alleging a violation of her personality rights, in particular her right to reputation. She maintained that the headline published on 26 March 2008 had negatively affected her public image. She sought an injunction against any further infringement of her right to reputation, an apology from the publisher and compensation for non-pecuniary damage in the amount of 4,000,000 Hungarian forints (HUF – approximately 13,000 euros (EUR)).

12. According to the witnesses who gave evidence before the first-instance court, the applicant had been truly saddened by the way the article had presented her family plans, especially that her statements had been hurtful to the memory of her late husband. She had also received a lot of criticism from her acquaintances. In a judgment of 5 April 2009 the Budapest Regional Court granted an injunction against any further infringement, ordered a public apology and obliged the publisher to pay the applicant HUF 600,000 (EUR 2,000) in respect of non-pecuniary damage. The remainder of the applicant's claim for compensation was dismissed. The court established the following:

“..the private life of the plaintiff and her late spouse was previously at the centre of media attention ... György Faludy and the plaintiff have already shocked public opinion with the declaration of their love. It turned out that she seduced the poet from

a man ... The poet-prince (*költőfejedelem*) happily introduced to the world his then yet unknown lover, who became his muse and who was 65 years younger than him. The Kossuth Prize winner and internationally recognised poet had a tendency to push the boundaries, openly admitted his homosexual adventures and love affairs, and held that taboos were to be dismantled. Therefore, when the country just began to digest and accept his relationship with Fanny, the poet accepted an offer from Penthouse magazine, which has since closed down, agreeing to be presented in the magazine in high-quality erotic pictures with his lover ... [The plaintiff] had even been subject of numerous hurtful and degrading remarks and attacks during György Faludy's life. The media echoed that opinion, doubting her true feelings towards her husband, and some of the publications stressed that theirs was a marriage of convenience ... They planned to adopt a child during the poet's lifetime, but since that plan failed, György Faludy came up with the idea of having a child through his son, but since his son was terminally ill, that plan could not go ahead either.

...

...the plaintiff's idea can be said to be bizarre and eccentric, nonetheless, how she has spoken about childbearing does not, following the rules of formal logic, mean that she has trampled on her husband's memory.

Based on the witness statements and the role the plaintiff's late husband played in public life, the court concluded that the applicant's idea about childbearing was not contrary to the thinking of György Faludy..."

13. The Regional Court added that both the applicant and her late husband had unusual, provocative personalities and ways of thinking, and the statement according to which she had infringed her late husband's memory did not correspond to reality and was unjustifiably hurtful. According to the court, statements in a front page headline constituted journalistic opinion, and were protected by the right to freedom of expression, as long as they were not devoid of any factual basis and did not amount to a blatantly humiliating or offensive value judgment. The court concluded that the statement that the applicant did everything for the limelight had not infringed her personality rights, whereas the statement that she had trampled on her husband's memory had infringed her right to reputation and dignity (33.P.22.472/2009/16.).

14. On 8 December 2011 the Budapest Court of Appeal reversed the previous judgment finding an infringement of the applicant's reputation and dismissed her action in its entirety. The court reiterated the Constitutional Court's case-law on the different fundamental rights at stake, pointing out that even shocking, disturbing or inaccurate opinions were protected by the right to freedom of expression and were not susceptible of proof. It also stressed that statements should be assessed in context and with regard to their background. The court explained in detail that the applicant and her husband had triggered controversial reactions and "everyday people with an average mindset" would have had an opinion on their relationship and marriage. It held that the headline was not a statement of fact but a value judgment expressed in connection with the applicant's own "peculiar" statements. According to the court, the main issue at stake was whether, in

the light of the applicant's own conduct "diverging from the widely-accepted social and ethical norms", the statement could be regarded as unreasonably hurtful and humiliating.

The court also found that the headline could not have infringed the applicant's reputation since her own statements were irrational and undignified, putting György Faludy's grandson in an embarrassing situation.

15. The applicant lodged a petition for review with the *Kúria*. In a judgment of 12 September 2012, the *Kúria* endorsed the finding of the second-instance court that the headline did not constitute a statement of fact but a value judgment concerning the unusual manner in which the applicant intended to start a family. Since it was not devoid of factual basis, it could not be considered humiliating, hurtful or offensive and as such had not infringed the applicant's dignity. The court nonetheless stated that it was irrelevant whether the applicant's previous unconventional conduct justified the value judgment (Pfv.IV.20.710/2012/5.).

II. RELEVANT DOMESTIC LAW

16. The Constitution, as in force at the material time, provided as follows:

Article 59

"(1) In the Republic of Hungary everyone has the right to reputation, to privacy of the home and to protection of secrecy in private affairs and of personal data."

Article 61

"(1) In the Republic of Hungary everyone has the right freely to express his opinion, and to access and impart information of public interest."

17. Act no. IV of 1959 on the Civil Code, in force until 15 March 2014, provided as follows:

Article 84

"(1) A person whose personality rights have been infringed may, depending on the circumstances of the case, have recourse to the following civil remedies:

- a) he may demand a court ruling establishing that an infringement has occurred;
- b) he may demand cessation of the infringement and [an injunction] forbidding the infringer from further infringements;
- c) he may demand that the infringer be ordered to provide satisfaction by a declaration or by any other appropriate means and, if necessary, that this be made adequately public by, or at the expense of, the infringer;
- d) he may demand an end to the damaging situation and restoration of the status quo by, or at the expense of, the infringer ...;

e) damages under the rules of civil liability...”

Article 339

“(1) Anyone who unlawfully causes damage to another person shall be obliged to pay compensation. He shall be relieved of liability if he can prove that he acted in such a manner as can generally be expected in the given situation.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The applicant complained that the Hungarian courts had refused to award her compensation for the publication of the headline of the newspaper article. She alleged that there had been a violation of her right to reputation, as guaranteed by Article 8 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ...for the protection of the rights and freedoms of others.”

A. Admissibility

19. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

20. The applicant asserted that the headline of the article published on 26 March 2008 had damaged her reputation. She submitted that the domestic courts had not struck a fair balance between her interest in protecting her right to reputation and the interest of the newspaper in publishing the headline. In any event, the weekly newspaper's interest had been of a purely financial nature and about attaining a larger readership with an offensive headline. She refuted the suggestion that as a public figure she was not entitled to the same level of protection of her private life as others. She also challenged the domestic courts' argument that her previous

statements and alleged unusual conduct justified an unreasonably hurtful and defamatory expression of opinion.

21. In the applicant's view, the journalistic expressions had been sensationalist with the sole aim of entertaining a particular readership with details of her private life, thus they had not entailed the same level of protection as expressions concerning matters affecting the public. She also stated that the deliberately offensive statement had no factual basis, since her true intention had been to maintain her late husband's memory. She pointed out that the media played a significant role in forming public opinion and with the expressions as at stake in the present case they had endangered her efforts to keep her husband's memory alive. The domestic courts had disregarded the witness statements in this respect.

22. The Government pointed out at the outset that, in accordance with the principle of subsidiarity, it was firstly for the domestic authorities to ensure the observance of the fundamental rights enshrined in the Convention. Consequently, the Court should limit the scope of its scrutiny and intervene only where the domestic courts' decision-making had been unfair or arbitrary. They emphasised that in the present case the domestic courts had carefully considered all the circumstances of the case and had taken into account all the submitted evidence and documents, had properly conducted the proceedings and had given detailed reasoning in support of their decisions. The applicant's case had been dealt with at three levels of jurisdiction, which had assessed and evaluated the relevant interests at stake in the light of domestic case-law and in compliance with the Convention requirements.

23. The Government also highlighted the margin of appreciation enjoyed by the State in the present case. That margin was broad where the national authorities had to strike a balance between the competing interests of the newspaper to exercise its right to freedom of expression and of a private person to protect her right to reputation.

24. The Government submitted that the expression had been a value judgment concerning the applicant's unusual family plans. It had not been offensive, injurious or degrading and could not be viewed as an attack against the applicant. It had had a factual basis since the applicant's past statements and appearance on nude photos together with her late husband had already given rise to public disapproval. Moreover, the applicant was a public figure who had voluntarily disclosed intimate details about her private life and therefore she should have foreseen the possibility that it would stir up controversy.

25. The Government thus invited the Court to conclude that the Hungarian courts had struck a fair balance between the applicant's right to reputation and the right of the publishing company to freedom of expression.

2. *The Court's assessment*

26. The Court reiterates that the right to protection of one's reputation is covered by Article 8 of the Convention as part of the right to respect for private life (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010; and *Annen v. Germany*, no. 3690/10, § 54, 26 November 2015). For Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 137, ECHR 2015). The Court has held, moreover, that Article 8 cannot be relied on in order to complain of a loss of reputation, which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012).

27. In cases such as the present one the Court considers that the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher who has published the offending article or under Article 8 of the Convention by the person who was the subject of that article. Indeed, as a matter of principle these rights deserve equal respect (see *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 41, 23 July 2009; *Timciuc v. Romania* (dec.), no. 28999/03, § 144, 12 October 2010; and *Mosley v. the United Kingdom*, no. 48009/08, § 111, 10 May 2011). Accordingly, the margin of appreciation should in principle be the same in both situations.

28. The Court has already had occasion to lay down the relevant principles which must guide its assessment in this area. It has thus identified a number of criteria in the context of balancing the competing rights (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 109-113, ECHR 2012, and *Axel Springer AG*, cited above, §§ 90-95). The relevant criteria are as follows: contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication and, where appropriate, the circumstances in which the information or photograph was obtained.

29. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 57, ECHR 2011). Furthermore, the outcome

of the balancing exercise will be acceptable in so far as those courts applied the appropriate criteria and, moreover, weighed the relative importance of each criterion with due respect paid to the particular circumstances of the case (see *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, no. 22947/13, § 68, 2 February 2016).

(a) How well known is the person concerned and what is the subject of the report?

30. The Court first notes that none of the parties disputed that the applicant – in her capacity as the widow of György Faludy and a well-known person of contemporary society – was a public figure. The Court therefore considers that she inevitably and knowingly exposed herself to public scrutiny and should therefore have displayed a greater degree of tolerance than an ordinary private individual (see *Milisavljević v. Serbia*, no. 50123/06, § 40, 4 April 2017).

(b) Prior conduct of the person concerned

31. Another factor is the applicant’s prior conduct *vis-à-vis* the media. As the domestic courts found, given the applicant and her late husband’s lifestyle and conduct, revealing details about their private life in a number of interviews and other media publications, it was probable that more critical reactions would be triggered. It is true that mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving a person discussed in an article of all protection. An individual’s alleged or real previous tolerance or accommodation with regard to publications touching on his or her private life does not necessarily deprive the person concerned of the right to privacy (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 130, ECHR 2015 (extracts)). However, in the present case, the applicant had actively sought the limelight so, having regard to the degree to which she was known to the public, her “legitimate expectation” that her private life would not attract public attention and would not be commented on was henceforth reduced.

(c) Content, form and consequences of the publication

32. As regards the content of the publication, the domestic courts classified the statement in the headline as a value judgment. The Court notes that the underlying facts of the expression in question, that is the applicant’s statements concerning her family plans, were not disputed by the parties to the defamation proceedings; rather, they disagreed whether the headline introducing the comments truly reflected the applicant’s behaviour and motives.

33. In the Court’s view, the expression in question, describing the applicant as “trampling on the memory” of her husband, indeed clearly

represented the journalist's interpretation of the applicant's family plans, and was a kind of moral criticism of it. In relation to such criticism, the Court notes that, although journalists must be afforded some degree of exaggeration or even provocation, they nevertheless have "duties and responsibilities", and should act in good faith and in accordance with the ethics of journalism (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 183, CEDH 2017 (extracts), and *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015).

34. In the present case, the headline merely related to the applicant's own statements, as reproduced in the accompanying article, and did not contain unsubstantiated allegations. The fact that the headline used an expression which, to all intents and purposes, was designed to attract the public's attention cannot in itself raise an issue under the Court's case-law (see *Axel Springer AG*, cited above, § 108). In the present case, the Court considers that the headline introducing the statements of the applicant must be considered as a matter of editorial choice intending to provoke a reaction.

35. As to the consequences of the headline in issue, the Court notes that according to the witness testimony in the defamation proceedings, the applicant was shaken by the article and how it had interpreted her statement. She also received critical remarks following the publication (see paragraph 12 above). For its part, the Court considers that the consequences of the publication must be put into perspective. Indeed, in deciding the applicant's claim, the domestic courts assessed the impact of the expression on her private life in the light of the extensive media coverage of her and her former husband, triggered by them personally. Looking at the wider context, the Court agrees with the finding of the domestic courts that the disputed publication had not been very prejudicial to the applicant's honour and reputation and could not be regarded as especially harmful to her psychological integrity.

(d) Method of obtaining the information and its veracity

36. The information to which the journalist reacted was expressed voluntarily by the applicant in the course of an interview, and was not acquired in circumstances unfavourable to her. Furthermore, there is no evidence, or indeed any allegation, of either factual misinterpretation or subterfuge on the part of the journalist.

(e) Contribution of the article to a debate of public interest

37. Admittedly, the domestic courts based their reasoning on the above factors, without going into an analysis of whether the general subject matter of the article concerned an issue of legitimate public interest or was merely sensational news intended to entertain. However, in the Court's view, in the circumstances of the present case, where the applicant gave an interview about her family plans clearly for the purposes of satisfying the curiosity of

a certain readership, the question of whether the accompanying expression in issue covered a subject of public interest is of minor relevance. Thus, for the Court, the absence of this element in the domestic courts' reasoning did not have an effect on the balancing exercise conducted by them.

(f) Conclusion

38. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts struck a fair balance between the journalist's freedom of expression under Article 10 and the applicant's right to have her reputation respected under Article 8. In particular, the potential negative consequences that the applicant might have suffered after the publication of the headline were not so serious as to justify a restriction on the right to freedom of expression guaranteed by Article 10.

39. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 23 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President